

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

KIMBERLEY A. ROBINSON,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 08-1563
)	Judge Nora Barry Fischer
COUNTRYWIDE HOME LOANS, INC.)	
COUNTRYWIDE HOME LOANS)	
SERVICING, L.P. AND BANK OF NEW)	
YORK AS TRUSTEE FOR THE)	
CERTIFICATEHOLDERS OF CWMBS,)	
)	
Defendants.)	
)	

MEMORANDUM ORDER

AND NOW, this 7th day of October, 2009, upon consideration of Defendants' Motion to Dismiss Plaintiff's Second Amended Complaint [39] Plaintiff's Brief in Opposition to Defendants' Motion to Dismiss Plaintiff's Second Amended Complaint [44], and Defendants' Reply Brief [45], it is HEREBY ORDERED that said Motion [39] is DENIED, without prejudice.

However, given Plaintiff's reliance in her Brief in Opposition on evidentiary material outside of the pleadings (*See* Docket No. 44, at 3, 15-16, & Exh. 1-2, 5), this Court concludes that judicial economy favors converting the instant Rule 12(b)(6) motion into a motion for summary judgment and treating the Motion to Dismiss as a "factual" motion, pursuant to Federal Rule of Civil Procedure 12(d). "Whether or not to treat the motion as a motion for summary judgment by considering the outside materials attached thereto is a matter of discretion for the court." *Brennan v. National Telephone Directory Corp.*, 850 F.Supp. 331, 335 (E.D.Pa. 1994). When the Court determines that

conversion of a motion to dismiss to one for summary judgment is appropriate, the parties must be given notice of such conversion and the opportunity to submit evidence in support and opposition thereto. *Carver v. Plyer*, 115 Fed.Appx. 532, 537 (3d Cir. 2004); *Rose v. Bartle*, 871 F.2d 331, 340 (3d Cir. 1989). Given the early stage of this litigation, the parties are hereby granted sufficient time to conduct discovery on the matters presented in this lawsuit and in Defendants' motion, and the parties are granted a reasonable opportunity to present all of the materials pertinent to the motion upon the conclusion of discovery, as detailed below.

Defendants are hereby directed to file an answer to Plaintiff's Second Amended Complaint [38] by **October 20, 2009**. Discovery shall move forward in this matter. To that end, the parties are ORDERED to submit a Rule 26(f) Report (see attached Exhibit A) by **November 5, 2009**, and a Case Management Conference, which the parties may attend telephonically, is hereby scheduled for **November 12, 2009 at 4:00 p.m.** After the Case Management Conference, the Court will set a schedule for discovery and for dispositive pleading, including any renewal of Defendants' motion. Given the parties' prior attempts to settle, they are exempt from submitting a stipulation to Alternative Dispute Resolution.

It is so ordered.

s/ Nora Barry Fischer
Nora Barry Fischer
United States District Judge

cc/ecf: All Counsel of Record.